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NASA Procedural Requirements

COMPLIANCE IS MANDATORY

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Request Notification of Change

(NASA Only)

Subject: Alternative Dispute Resolution for Discrimination Complaints

Responsible Office: Office of Diversity & Equal Opportunity

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Chapter 1. Roles and Responsibilities

1.1 Assistant Administrator for Diversity and Equal Opportunity

1.1.1 The Assistant Administrator (AA) for Diversity and Equal Opportunity (EO) has the authority to develop and administer effective and efficient Equal Employment Opportunity (EEO) Alternative Dispute Resolution (ADR) programs and procedures consistent with existing laws, regulations, Agency directives, and guidance.

1.1.2 Under NASA's policy pertaining to discrimination complaints, the AA for Diversity and Equal Opportunity is responsible for:

- a. The administration of an effective and efficient discrimination complaint program and ADR procedures regarding EEO matters; and
- b. Oversight of the informal ("pre-complaint") stage of the discrimination complaint program and direct responsibility for the formal complaint process.

1.1.3 The Office of Diversity and Equal Opportunity (ODEO) shall be responsible for ensuring that there is an EEO ADR process in place at each Center and shall exercise oversight over the Agency and Center EEO ADR procedures.

1.1.4 The AA for ODEO shall designate the Director, Complaints Management Division to oversee the operation of the EEO ADR process.

1.2 Director, Complaints Management Division, ODEO

1.2.1 The Director, Complaints Management Division shall:

- a. Provide oversight of the day-to-day operations of the EEO ADR process; and
- b. Appoint and supervise the Agency ADR Program Manager.

1.3 Agency ADR Program Manager

1.3.1 The Agency ADR Program Manager shall be appointed by and reports to the Director, Complaints Management Division, ODEO.

1.3.2 The ADR Program Manager shall administer the Agency's EEO ADR program. In this regard the ADR Program Manager shall:

- a. Provide policy and operational guidance for the Center ADR Programs;
- b. Develop training and provide technical assistance to the Centers; and
- c. Provide informational materials on EEO ADR for dissemination Agency wide.

1.3.3 The ADR Program Manager shall be responsible for the day-to-day operation of the EEO ADR formal process. In this regard the ADR Program Manager shall:

- a. Consult and coordinate with Centers regarding the determination of whether to offer mediation at the formal stage of the EEO complaints process;
- b. Arrange for mediation at the formal stage of the process, including identifying a mediator, providing the mediator with the names of the parties to determine whether there is a potential or actual conflict of interest, contacting all the parties to the mediation and providing them with the name of the mediator(s), and providing the mediator with all pertinent documents needed to conduct the mediation; and
- c. Determine, in consultation with the Center ADR Manager and the mediator, whether mediation should be terminated by either party, for example, where there is unreasonable delay or other evidence of lack of good faith on the part of either party.

1.4 Center Director

1.4.1 The Center Director shall be responsible for ensuring the effective functioning of the EEO ADR program at the informal stage of the discrimination complaint process and for ensuring appropriate coordination with ODEO at the informal and formal stages. The Center Director or designee shall:

- a. Ensure that the procedures set forth in this NPR pertaining to EEO ADR at the Center level are carried out;
- b. Designate a responsible official (Center EEO ADR Manager) for the Center EEO ADR program;
- c. Receive regular reports from the responsible official on the functioning of the Center EEO ADR process; and
- d. Decide to institute an EEO ADR Management Team based on information provided (see Sec. 1.7, below).

1.4.2 Each Center shall be required to submit Center EEO ADR procedures along with any related informational materials to ODEO for concurrence within 90 days of the

effective date of this NPR, consistent with P.5(a), Verification/Measurement, above. Any future modifications to the procedures shall also be submitted to ODEO for concurrence prior to implementation.

1.5 Center Equal Opportunity (EO) Directors

1.5.1 NASA Center EO Directors¹ (EO Directors) shall:

- a. Ensure the fair and efficient functioning of the informal EEO complaints process in cooperation and coordination with ODEO and the Center Director;
- b. Manage and direct the informal complaint process and advise employees about all aspects of the EEO process, including ADR; and
- c. Identify cases appropriate for mediation in consultation with Center EEO ADR Management Teams where they exist, or where they do not exist, in consultation with appropriate officials, such as the Chief Counsel or designee(s).

¹ For purposes of this document, the term "Center EO Director" is always inclusive of the NASA Headquarters EO Director.

1.6 Center EEO ADR Managers

1.6.1 The Center EEO ADR Manager (ADR Manager) shall be appointed by the Center Director. If a Center Director appoints an EO Director to this role, the EO Director shall serve as the ADR Manager or shall delegate the day-to-day functions.

1.6.2 The ADR Manager shall:

- a. Work closely with Center management and the Center's EEO Office to administer the Center's EEO ADR process, including carrying out specific roles and responsibilities pertaining to EEO ADR at the informal and formal stages of the EEO complaints process as identified in this NPR (Chapters 2, 3, and 4);
- b. Identify cases appropriate for mediation in consultation with the Center EO Director, Center EEO ADR Management Teams if they exist, or in consultation with appropriate officials, such as the Chief Counsel or designee(s);
- c. Arrange for mediation at the informal stage of the process, consistent with this NPR, Chapter 3;
- d. Develop EEO ADR procedures for the informal stage of the discrimination complaint process that are consistent with Agency-wide EEO ADR policy, as well as the needs of the particular Center;
- e. Develop or utilize existing NASA communications materials to promote and advocate the use of the EEO ADR process to resolve disputes;
- f. Verify that Center managers, supervisors, and employees, as necessary, are appropriately trained on the Agency and Center EEO ADR procedures, including periodic training in ADR for Center employees likely to be involved in EEO ADR or dispute-related activities (such as EEO personnel, Human Capital/Human Resources personnel, EEO ADR Team members, Chief Counsel or General Counsel personnel, and managers who may serve as management or resolving officials in disputes);

- g. Coordinate with the Complaints Management Division, ODEO in its administration of the EEO ADR process at the informal and formal stage of the discrimination complaints process (see Chapters 2 and 4);
- h. Report annually on the Center EEO ADR process to the AA for ODEO in accordance with Preface P.5 of this NPR (Verification/Measurement);
- i. Utilize forms contained in Appendix B to ensure consistency in the ADR process; and
- j. Explore the need for an EEO ADR Management Team to facilitate the process and report findings to the Center Director. To the extent an EEO ADR Management Team is used, the Center ADR Manager will serve as team lead. EEO ADR Management Teams are encouraged but not mandatory.

1.7 EEO ADR Management Team

1.7.1 If an EEO ADR Management Team is established at a Center, it shall be comprised of representatives of the Center's Equal Opportunity (EO) Office, the Office of the General Counsel or the Office of the Chief Counsel, and the Human Resources Office. Other Center officials may be represented on the EEO ADR Team as deemed appropriate.

1.7.2 The EEO ADR Team shall:

- a. Meet regularly to engage in open discussions regarding the nature of existing EEO complaints and the most effective ADR methodology to address specific situations;
- b. Assist in the identification of Management representative and settlement officials;
- c. Assist the EO Director and/or ADR Manager in identifying cases appropriate for mediation;
- d. Serve in an advisory role to management regarding problems identified in an organization; and
- e. Explore resolution options dealing with potential or actual disputes of an individual or organizational nature.

1.8 Management representative

1.8.1 The Management representative shall be selected by the Center Director or his/her designee.

1.8.2 The Management representative shall have authority and responsibility to negotiate in good faith and shall have the option of discontinuing ADR after consultation with or on behalf of management, if the representative determines that no option for resolution acceptable to NASA can be developed.

1.8.3 The Management representative shall be, or shall have immediate access to, a person delegated with authority to approve or enter into a settlement agreement binding on the Center and Agency (see also "Settlement Official," Sec. 1.9, below). Hence, the Management representative and the Settlement Official may be the same individual.

1.8.4 However, no responsible management official or agency official directly involved in the case shall serve as the person with settlement authority, i.e., where the responsible

management official is serving as the Management representative he/she shall not also serve as the Settlement Official.

1.8.5 In addition, where the aggrieved individual or Complainant so requests, the Management representative shall not be the responsible management official, i.e., the Agency official who has been identified as allegedly being responsible for the matters raised by the aggrieved individual (informal stage) or Complainant (formal stage).²

² Consistent with EEOC usage, the term "aggrieved" refers to the individual alleging harm with respect to employment at the informal stage. The "complainant" is used to refer to an individual who has filed a formal EEO complaint. (See also Appendix A, Definitions).

1.9 Settlement Official

1.9.1 The Settlement Official shall be selected by the Center Director or his/her designee.

1.9.2 Each Center shall designate a Settlement Official in advance of mediation or have a standing Settlement Official.

1.9.3 The Settlement Official shall be a senior Agency representative who has been delegated authority to enter into an agreement that is binding on the Center and Agency.

1.9.4 While the Settlement Official may be the Management representative, consistent with Section 1.8.3 above, no responsible management official or Agency official directly involved in the case shall serve as the person with settlement authority. Therefore, where the Management representative is the responsible management official, the Management representative shall not act as the Settlement Official. Nor shall the Settlement Official be the EO Director.

1.10 Neutral/Mediator

1.10.1 The Administrative Dispute Resolution Act (ADRA) of 1996 defines a neutral as "an individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy." (For purposes of this NPR, the terms "neutral" and "mediator" are synonymous).

1.10.2 As a matter of policy, it is highly encouraged that the Agency ADR Program Manager or Center EEO ADR Managers obtain neutrals from sources external to the Center where the dispute arose, e.g., Shared Neutral Program, other agencies, contract mediators, or similar sources. However, EEO personnel shall not serve as neutrals/mediators.

1.10.3 Each neutral used by NASA shall have been thoroughly trained and shall be well experienced. See EEOC MD-110, Section IV (B), which discusses qualifications of neutrals. Upon request, parties shall be provided with information on the neutral that the Center selects for services in a given matter, and parties shall have the right to request a different neutral, for example, where there is a concern raised regarding conflict of interest.

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